



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

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FEB 02 2009

Col. Aniello L. Tortora
District Engineers
U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
26 Federal Plaza, Room 2109
New York, NY 10278-0090

Dear Col. Tortora:

The Environmental Protection Agency (EPA) has reviewed the U.S. Army Corps of Engineers, New York District's final programmatic environmental impact statement (PEIS) on the Dredged Material Management Plan (DMMP) for the Port of New York and New Jersey (CEQ # 20080433). The DMMP seeks to develop a regionally supported, comprehensive plan to manage the material generated from both the Federal and non-Federal maintenance and deepening of the Port through the year 2065. EPA's review was conducted in accordance with Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609, PL 91-604 12(a), 84 Stat. 1709), and the National Environmental Policy Act (NEPA).

The draft PEIS was circulated in 1999, but the final document, which addressed comments received on the draft, was never distributed for public review. Although the DMMP has been updated periodically since September of 1999, the PEIS has not. As EPA indicated in a November 25, 2008 meeting with your staff, the distribution of an updated DMMP with the 1999 final PEIS complicates what was intended to be a transparent process of vetting the Corps responses to the comments received on the 1999 draft PEIS.

The enclosure highlights information in the PEIS that is outdated and does not coincide with the current version of the DMMP. As expressed in my November 25 letter to you, EPA recognizes the Corps' concern about not expending limited federal resources simply to create "a perfect document" given that the PEIS is programmatic. Therefore, EPA suggests that the most prudent means to address the administrative aspects of NEPA would be to formally terminate the PEIS process with the explanation that individual project documents have been and will be prepared and distributed for public review in full compliance with NEPA.


John Filippelli, Chief

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) REGION 2

Technical Comments on August 2008 Dredged Material Management Plan for the Port of New York and New Jersey Final Programmatic EIS

1. **Section 3.2.2, d.** - The PEIS states that the CARP effort "anticipates that the contaminant fate and transport model will be calibrated and validated for a number of contaminants by the end of 2005." This must be updated.
2. **Section 3.2.3.1.1, c.** - The PEIS states that "As of March 2005, approximately 22.5 MCY of remediation material had been placed at the HARS." This should be updated for 2008.
3. **Section 3.2.3.2, d.** - It is EPA's understanding that the use of the Jamaica Bay borrow pits for the disposal of dredged material is no longer a viable option because of community concerns. If this is the case, this section (and any others dealing with the Jamaica Bay pits) should be updated.
4. **Section 3.2.3.3, a.** - Land remediation sites should reflect the DMMP. Sites that should be mentioned in the PEIS are Bergen County's Landfill, Landfill 1 E (Meadowlands), Encap, Keegan Landfill (Meadowlands), Fresh Kills Landfill in Staten Island (800,000 cy), Dowd Avenue in Elizabeth, NJ, and the Bronx Terminal Market, Bronx, NY.
5. **Section 3.2.4, c.** - The decontamination section is not updated. EPA has been working with several companies over the last 10 years, and assisted in setting up a treatment facility with IGT. The 1999 NJDOT/OMR pilot results should be discussed.
6. **Section 4.4.2** - This section should be updated to reflect the DMMP. Dredged material has gone to Tire Pond, a superfund site in Connecticut. Also, Waste Management in Virginia will accept unamended dredged material. In addition, EPA understands that both the Belford New Jersey site, and the Orange Co, New York quarries will not be used because of community opposition.
7. **Section 4.3.1.1.** - This section used data from the 1970's and 1980's. Any available updated bacteriological data should be provided.
8. **Section 4.3.1.7.4, a.** - The bald eagle (*Haliaeetus leucocephalus*) is no longer on the federal endangered species list. This must be updated throughout the PEIS.
9. **Section 4.3.1.10.1.** - The PEIS is using 1996 shipping volumes. 2007 data are available from the Port Authority. This must be updated throughout the PEIS.
10. **Section 3.1.13.** - The entire Air Quality Section of the PEIS is out of date and must be updated. For example, the attainment status of several counties has changed due to regulatory changes in the last few years. This must be updated throughout the PEIS.
11. **Section 4.3.2, a.** - The NY/NJ Baykeeper has tried establishing several oyster beds in the lower bay complex. These should be discussed.
12. **Section 4.3.2.2.2, a.** - This section should discuss the work on wetlands loss in Jamaica Bay. For example, any discussion about use of dredged material to stop sediment loss around wetlands.

13. *Section 4.3.3.2.1 b.* - On April 25, 2002, MOTBY was officially renamed The Peninsula at Bayonne Harbor by the Bayonne Local Redevelopment Authority and is in the process of major redevelopment.
14. *Section 4.3.3.11, c* - The Interstate Sanitation Commission changed its name to the Interstate Environmental Commission in 2000.
15. *Section 4.3.3.16.3 b.* - The Hudson River Park is approximately 60 percent complete.
16. *Section 3.4* - As stated above, there are many upland sites in the metropolitan area that have been or are now being used for processed dredged material and are mentioned in the DMMP, including OENJ Elizabeth, Koppers/Seaboard, OENJ Bayonne, Port Liberte, FDP Enterprises, Linden Landfill, Penn and Fountain, Encap, 1E Landfill, Overpeck Landfill, Keegan Landfill, NJ Turnpike, Port Reading Business Park, Elizabeth Seaport Park, Belmawr Waterfront Development, Burlington Neck LLC, Henry Harris Landfill. The PEIS should mention these, and discuss how private dredgers are finding upland sites.
17. *Section 3.4 a.* - The recent status of a regional dredged material rehandling facility should be reflected in the DMMP.
18. *Section 3.4.c.* - Consolidated Technologies was renamed Clean Earth almost 10 years ago. Also, several dredgers now have reprocessing/rehandling facilities, such as DonJon Marine (Port Newark) and Great Lakes (Koppers).
19. *Section 4.3.4.11* - EPA is concerned that the Water Quality section is out of date. There are more recent references than NJDEP 1995.
20. *Section 4.3.4.16 d* - There is a marina in Belford Harbor - the Belford Marine Railway.
21. *Section 5.1.a.* - DEB and TP are not in the Glossary.
22. *Section 5.1 a.* - There are several environmental dredging projects now being proposed in the New York Harbor, such as the Passaic River Project and Newtown Creek. The potential volumes should be analyzed.
23. *Section 5.1, l.* - see comment 16.
24. *Section 5.3.1, b.* - Section 3.3.1 should be Section 3.2.1
25. *Section 5.3.1. c.* - The Citgo turbo scour project results should be discussed.
26. *Section 5.3.3.1* - Update HARS volume amounts.
27. *Section 5.3.6.1.* - The current viability of the Belford Site should be determined
28. Fish and Wildlife Coordination Act Report. EPA recommends that this 2003 report be updated.